

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 20, 2016**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2015AP1517-CR**

**Cir. Ct. No. 2014CM221**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MUSTAFA Z. ABDEL-HAMID,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: BONNIE L. GORDON and MICHAEL GUOLEE,<sup>1</sup> Judges.  
*Affirmed.*

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<sup>1</sup> The Honorable Bonnie L. Gordon presided over the guilty plea and sentencing and the Honorable Michael Goulee denied the postconviction motion.

¶1 CURLEY, P.J.<sup>2</sup> Mustafa Z. Abdel-Hamid appeals his convictions for two counts of misdemeanor criminal damage to property (less than \$2500 damage) as a party to the crime, contrary to WIS. STAT. §§ 943.01(1), 939.51(3)(a), and 939.05 (2013-2014).<sup>3</sup> He also appeals the denial of his postconviction motion. He argues that both the trial court and the postconviction court erroneously exercised their discretion when they denied his request for the expunction of his criminal record pursuant to WIS. STAT. § 973.015(1m)(a)(1). This court concludes that the trial court, and later the postconviction court, properly exercised their discretion in refusing to expunge Abdel-Hamid's criminal convictions.<sup>4</sup>

### BACKGROUND

¶2 According to the criminal complaint filed in January 2014, on October 30, 2013, Abdel-Hamid, Hashem Dudin, and two juveniles were riding around in a car in the City of South Milwaukee. Abdel-Hamid was driving, Dudin was in the front seat and the two juveniles were in the back seat. It was alleged that Dudin and one of the juveniles were shooting out multiple random car windows with a BB gun (and also one residential window). One of the two shooters also shot the BB gun at a boy who was carrying a large box, injuring him in the chest.

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<sup>2</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14).

<sup>3</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

<sup>4</sup> Abdel-Hamid has asked to have this opinion published. Opinions authored by only one judge are not eligible for publication. *See* WIS. STAT. § 809.23(4)(b).

¶3 The complaint also stated that Abdel-Hamid, and co-defendant Dudin both confessed that on or around the evening of October 13, 2013, while driving around in the City of Oak Creek, Dudin and the juvenile shooter in the October 30th incident also shot out car windows while Abdel-Hamid was driving. In addition, the complaint advised that co-defendant Dudin's phone contained videos of the October 13th shootings. In one of the videos, laughter can be heard after the sound of rapid BB shots followed by the sound of breaking glass.

¶4 The four were apprehended on October 30, 2013, after numerous complaints of property damage were reported to the South Milwaukee police. The callers gave a description of a black Toyota with a partial license plate of "312" being connected to the property damage. A lieutenant from the department located a car matching that description and conducted a traffic stop. Besides the four individuals referenced earlier found in the car, the police observed a loaded Daisy BB gun in the back seat.

¶5 Abdel-Hamid and Dudin, due to their ages, were charged as adults, and the remaining shooter was referred to juvenile authorities. Abdel-Hamid and Dudin were charged with two counts of misdemeanor criminal damage to property and one count of misdemeanor battery as parties to the crime. The complaint also identifies fifteen victims who described the damage they observed to their respective vehicles and, in one instance, a residential window, as well as the individual who was shot in the chest. All the victims stated they gave no consent to the damage. Ultimately, Abdel-Hamid pled guilty after the State agreed to dismiss the battery charge and read it in and agreed to recommend eight months in the House of Correction, which would be stayed with the imposition of twenty-four months of probation.

¶6 At sentencing, Abdel-Hamid’s attorney asked the trial court to follow the State’s recommendation and asked the court to “consider him for expungement.” The trial court discussed the effects that these crimes had on the victims who had communicated with the court through victim impact statements. The trial court observed that the shootings intruded into their lives, leaving the victims insecure, emotionally upset not knowing whether they were the intended victim, and, of course, horribly inconvenienced. After commenting on the three major sentencing factors—the seriousness of the offense, the character of the accused, and the interest of the community and the need for protection—the trial court rejected the State’s sentencing recommendation. Instead the trial court sentenced Abdel-Hamid on count one to eight months in the House of Correction with Huber privileges for work and school, and on count two, nine months in the House of Correction, which was stayed, and eighteen months of probation, which was imposed. In addition, the trial court ordered Abdel-Hamid to perform five hours of community service per month and to pay restitution along with the costs and surcharges. With regard to the request for expunction, the trial court’s remarks indicated implicitly that Abdel-Hamid would not benefit from expunction. Further, the trial court stated “the community would be harmed by expungement.”

¶7 Abdel-Hamid brought a postconviction motion seeking expunction. In a written decision, the postconviction court denied the request and found “no improper use of discretion” by the trial court. This appeal follows.

#### ANALYSIS

¶8 Abdel-Hamid contends that the trial court and the postconviction court wrongly determined that his criminal convictions should not be expunged. When sentencing issues are appealed, our review is limited to determining whether

discretion was erroneously exercised. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197.

¶9 “The term ‘discretion’ contemplates a process of reasoning which depends on facts in the record or reasonably derived by inference from the record that yield a conclusion based on logic and founded on proper legal standards.” *See State v. Delgado*, 223 Wis. 2d 270, 280, 588 N.W.2d 1 (1999). “The record on appeal must reflect the circuit court’s reasoned application of the appropriate legal standard to the relevant facts of the case.” *See id.* at 281. The analysis starts with the presumption that the court has acted reasonably, and the defendant-appellant has the burden to show unreasonableness from the record. *State v. Haskins*, 139 Wis. 2d 257, 407 N.W.2d 309 (Ct. App. 1987).

¶10 The statute authorizing the expunction of a criminal conviction is found in WIS. STAT. § 973.015, and as pertinent here states:

when a person is under the age of 25 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law for which the maximum period of imprisonment is 6 years or less, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition.

WIS. STAT. § 973.015(lm)(a)1.

¶11 Abdel-Hamid first submits that the trial court and the postconviction court erroneously exercised their discretion because the trial court found, and the postconviction court concurred, that Abdel-Hamid would not benefit from expungement. He argues that there is nothing in the record to support that conclusion, and he contends that he has no other criminal record, that he was

remorseful, and that without the expungement, his college career, and possibly his professional career, are in jeopardy. This court disagrees.

¶12 As noted in *State v. Leitner*, 2002 WI 77, ¶38, 253 Wis. 2d 449, 471, 646 N.W.2d 449,

[a]lthough the Wisconsin legislature has not explicitly set forth the purpose of WIS. STAT. § 973.015, we agree with the defendant and the State that § 973.015 was enacted as a companion to the Wisconsin Youthful Offenders Act and that both statutes were intended to provide a break to young offenders who demonstrate the ability to comply with the law.

(Footnote omitted.) Stated otherwise and quoting *State v. Anderson*, 160 Wis. 2d 435, 439-41, 466 N.W.2d 681 (Ct. App. 1991), WIS. STAT. § 973.015 ““provides a means by which trial courts may, in appropriate cases, shield youthful offenders from some of the harsh consequences of criminal convictions.”” *Leitner*, 2002 WI 77, ¶38. The trial court and the postconviction court both concluded that this was not an appropriate case for expunction.

¶13 The trial court told Abdel-Hamid that “life is a series of choices. Sometimes we make poor choices and sometimes we need to learn that there are consequences for our actions and that they follow us.” The court went on to state that “[it] believe[d] the number of events, the days that this occurred over, the number of victims, would send a bad message to you. That—and you need to understand that there are consequences.” Obviously, the trial court’s overarching concern was to teach Abdel-Hamid that when you commit mindless crimes, there are consequences. The trial court was aware of his stellar school record and his ambitious plans for the future but clearly felt expunging his convictions would unduly depreciate the seriousness of what he did and send the wrong message. The trial court’s explanation was a proper exercise of discretion.

¶14 Finally, Abdel-Hamid challenges the trial court’s determination that the community would be harmed by granting expunction. Abdel-Hamid contends that in assessing whether the community would be harmed by expungement, the trial court is limited to predicting whether Abdel-Hamid would reoffend. He then theorizes that there are “no facts that would lead one to believe the defendant-appellant would reoffend,” and thus he concludes that the trial court’s determination that the community would not benefit by expunction is not supported by the record. Again, this court disagrees.

¶15 In deciding whether society would benefit from an expungement, nothing in WIS. STAT. § 973.015 limits the trial court to only consider whether the offender will reoffend. There are a myriad of reasons why a court could decide that expungement would not benefit society. In *State v. Matasek*, 2014 WI 27, ¶9, 353 Wis. 2d 601, 846 N.W.2d 811, for example, the trial court determined that expunging Matasek’s conviction for delivering two pounds of marijuana would harm society.

The next part is would society be harmed. Yeah, they would in my opinion. Because it would, in society’s eyes, in this defendant’s eyes, it would unduly depreciate the seriousness of what he’s done. It wouldn’t reflect delivering two pounds of marijuana. It would send a contrary message to this defendant. It would send a contrary message to society. And it would fail to put them on notice of what he’s done here.

¶16 Similarly, the trial court here said that the number of criminal events over a series of days and the number of victims prevented her from expunging his convictions. The trial court went on to say:

these actions were extremely disruptive to members of our community and a young 15 year old was—received minor injuries from the result of a BB gun being shot at him. So, I believe the community would be harmed by

expungement. Not because of the BB gun or the battery that was dismissed and read in, but the totality of the events.

¶17 Here, the trial court's rationale for finding that society would be harmed by expungement is a reasonable exercise of discretion. For the reasons stated, the determination to not expunge Abdel-Hamid's convictions is affirmed.

*By the court.*—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.



